

# *H.R. 4434 – Ensuring Accountability in Agency Rulemaking Act*

- Good governance begins with accountability, and nowhere is this needed more than in our Federal bureaucracy.
- The *Ensuring Accountability in Agency Rulemaking Act* would require all rules, except in limited circumstances, be signed and issued by an individual appointed by the President and confirmed by the Senate.
- Compliance with constitutional rulemaking requirements has been inconsistent. This undermines accountability and opens agencies up to legal challenges because of improperly issued rules, which also provides uncertainty for individuals and business owners.
- According to a recent study, the Department of Health and Human Services' rulemaking practices from 2001 to 2017 revealed that 1,860 FDA final rules (98% of the total) had been issued illegally and that other agencies had similar problems.<sup>1</sup>
- In *Buckley v. Valeo* (1976), the Supreme Court held that rulemaking is a significant government power that may be exercised only by officers appointed in accordance with the Constitution's Appointments Clause. More recent court decisions, such as *Edmond v. United States* (1997), support the conclusion that only principal agency officers (like Department Heads and Assistant Secretaries confirmed by the Senate) may issue regulations that have the force of law and cannot be amended without another rulemaking procedure.

**Supporting Groups:** Pacific Legal Foundation, FreedomWorks, and Heritage Action

To cosponsor the *Ensuring Accountability in Agency Rulemaking Act*, please reach out to Nicole Manley at [Nicole.Manley@mail.house.gov](mailto:Nicole.Manley@mail.house.gov).

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<sup>1</sup> *But Who Rules the Rulemakers?* A Study of Illegally Issued Regulations at HHS, by Angela C. Erickson and Thomas Berry of The Pacific Legal Foundation